145—14

RECORD, CASE No. 13,467.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 314.

GEORGE G. LATTA, APPELLANT,

vs.

WILLIAM H. GAINES AND MARIA GAINES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JANUARY 2, 1889.

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1 Be it remembered that on the 23d day of May, 1884, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas William H. Gaines and wife, by M. W. Benjamin and R. G. Davies, Esqrs., their solicitors, and filed therein their bill of complaint, on the chancery side of said court, against J. L. B. Caver *et al.;* which bill of complaint is in the words and figures following, to wit:

2 United States Circuit Court, Eastern District of Arkansas, October Term Thereof, 1884.

WILLIAM H. GAINES and MARIA GAINES, His Wife, Plaintiffs,
vs.
J. L. B. CAVER & GEORGE G. LATTA, Defendants.

William H. Gaines and Maria Gaines, his wife, bring this suit against J. L. B. Caver and George G. Latta, and for cause of action allege—

That in the year of 1851, in pursuance of the instruction of the Secretary of the Interior, plaintiff Maria Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, entered, under the pre-emption laws of the United States, the southwest quarter of section thirty-three, in township two (2) south, range 19 west, for which they
3 paid the United States Government two hundred dollars, which was advanced and paid by plaintiff William H. Gaines, and which money the United States still retains.

At the time of said entry a small portion of said land was occupied by Mrs. Lydia Belding, widow of Ludovicus Belding, and the portion of said lands for which this suit is brought was occupied by —— ——, and in — William H. Gaines, Maria Gaines, Albert Belding, Henry Belding, and George Belding, under the supervision and control of William H. Gaines, brought suit in the Hot Springs circuit court against —— —— and recovered judgment for the possession of said land, which judgment was afterwards affirmed by the supreme court of the State of Arkansas and by the
4 Supreme Court of the United States, and on the — day of ——, 1856, William H. Gaines was, by the sheriff of Hot Springs county, put into the possession of said property by virtue of a writ of possession issued upon the judgment of said Hot Springs circuit court in obedience to the mandates of the supreme courts, both of the State and of the United States, and said plaintiffs, William H. Gaines and Maria Gaines, his wife, remained in peaceable and quiet possession of said property until the first day of June, 1876, when they were dispossessed of said property by a receiver appointed by the Court of Claims of the United States under an act of Congress entitled "An act in relation to the Hot Springs reservation, in Arkansas," approved June 11, 1870.

Plaintiffs entered into possession by virtue of said entry and by virtue of the decisions of said State and United States supreme courts

and the writs of possession issued in pursuance of said judg-
5 ments, and continued in possession for a period of about twenty years, until the Supreme Court of the United States, in a suit to determine to whom the patent should issue, decided that said lands were not subject to pre-emption or entry, and that no claimant was entitled to a patent, but the same was still the property of the United States, which decision was rendered April 24, 1876. Plaintiffs during said twenty years paid taxes on said property and fenced and built houses on the same and otherwise improved the same. On the — day of ——, 1874, plaintiff Wm. H. Gaines, being fully authorized by said heirs, leased a lot of ground, which has since been laid off into lots and blocks by the Hot Springs Commission in pursuance of an act of Congress and is now known as lot eight (8) and block (130) one hundred and thirty, to J. L. B.
6 Caver, which lease was for the term of one year, to be renewed at the election of the lessee from year to year until the title to the Hot Springs quarter section of land was settled, for an annual rent of —, payable in monthly installments of —.

Said lease also provided that all buildings and improvements erected on said lot by the lessee might be removed therefrom during the continuance of the lease or within thirty days thereafter, but that no buildings or improvements erected could be removed while said rent or any part thereof remained due and unpaid.

It also provided that the lessor should have a lien on all buildings and improvements to secure the rent, a copy of which is hereto attached in Exhibit "A" and made a part hereof.

Said lessee took possession of said land under and by virtue
7 of said lease only, and in no other way whatever, and he and — assigns occupied the same under said lease until the first day of June, 1876; at that time the United States Government dispossessed all parties to this suit that were in possession, either as landlord or tenant, and took possession thereof and leased said lands and improvements through A. O. Morgan, receiver, appointed by the United States Court of Claims for that purpose, and continued in possession until the same was entered at U. S. Land office.

That on the 24th day of April, 1876, said lessee and *their* assigns owed the lessor for rent the sum of $119.15, one hundred and nineteen dollars and fifteen cents.

Said lessee and *their* assigns failed to remove said buildings
8 and improvements erected by *them* at any time during or within thirty days after the expiration of the lease, and, by virtue of the provisions of the lease, said buildings and improvements erected by said lessee and *their* assigns became the buildings and improvements of William H. Gaines.

That on the 29th day of September, 1879, while said claims hereinafter mentioned were pending before said commission and before any award to the right to purchase had been made to either of said claimants, said lessee, J. L. B. Caver, sold and transferred to George G. Latta and Walter A. Morse all his right, title, and claim to said premises, they well knowing before said transfer all the terms and

conditions of said lease, which transfer was made without the knowledge or consent of the plaintiff.

9 Said Walter A. Morse, who is not sued herein and has conveyed one undivided half interest in said property, and A. B. Gaines, a son of plaintiffs, has also made a deed to the undivided half conveyed by said Moore, which *undeveloped* half is now owned by Mary Pohamus, and which undivided half is not sued for herein.

Plaintiffs, by arrangement with George, Henry, and Albert Belding, having become the owner of said claim—to wit, by a deed from Albert, Henry, and George Belding to William H. Gaines dated June 1st, 1860, for an undivided half of three-fourths of said preemption claim, a copy of which deed is made a part hereof, marked Exhibit "B;" also a deed from Albert Belding to William H. Gaines, dated October 20th, 1877, for his entire interest in said claim, a copy of which is made part hereof, marked Exhibit "C;"

10 also a deed George Belding to William H. Gaines and a deed from Henry Belding to William H. Gaines, each for *their* interest in said claim, a copy of which deeds are in Exhibit A hereto—aver that in less than six calendar months after the first sitting of the Hot Springs Commission, under the act of Congress of the United States entitled "An act in relation to the Hot Springs reservation, in the State of Arkansas," approved March 3, 1877, they filed their claim before said commission to purchase said lots, and that J. L. B. Caver filed a like claim, and that upon the hearing of said claims they were consolidated by said commission for the purpose of hearing the testimony; and said petitions filed and the testimony taken before said commission clearly showed that J. L. B. Caver had acquired his possession in no other way but by said lease made by plaintiff William

11 H. Gaines to said J. L. B. Caver, as will more fully appear from a complete copy of the petition, testimony, and record entries in said claims filed herewith and marked Exhibit "A" and made part hereof; and, notwithstanding that said petition and testimony showed that defendant J. L. B. Caver acquired possession only by virtue of said lease, still said commission misconstrued the law applicable to that state of facts and awarded the right to purchase said lots to defendant J. L. B. Caver, and since said award said defendant has purchased said lots from the United States and received a patent therefor, and on account of said misconstruction of the law as applied to the

12 facts before said commission the right to purchase said lots, which in law, equity, and good conscience should have been awarded to plaintiffs, was by said misconstruction of the law illegally and wrongfully awarded to defendant J. L. B. Caver by said Hot Springs Commission.

Plaintiffs aver that as defendants have never had any other right or title to said lots or to the possession thereof than that which they derived from said lease and under covenants to restore possession to plaintiff William H. Gaines, that said defendants should be held to hold said lots as trustee for the use and benefit of plaintiffs.

Plaintiffs further show that by said misconstruction of the law

that said Hot Springs Commission, instead of awarding to
13 the plaintiffs, as they in law, equity, and good conscience should have done, the certificate for condemned buildings, as provided under said act of Congress of March 3, 1877, that stood upon the portion- of said leased ground that were required by said commission for a street, awarded such certificate to defendant- for the sum of — dollars.

Plaintiffs offer to pay any sum of money that may be found due to the defendants or either of them by reason of any money paid to the United States for the purchase of said lots, and to do all other acts which may be found to be just and equitable. Plaintiffs aver the property herein sued for is worth more than five hundred dollars and this cause of action arises wholly under the law of the United States.

Plaintiffs ask that defendants be required to answer, but not under oath.

14 And they pray that an account may be taken of the state of accounts between themselves or either of them and said defendants severally; that they may be allowed reasonable rents for the occupancy of the said premises; that defendants may be decreed to hold said lots as trustees for the plaintiffs, and to convey the same to the plaintiffs, and that they may have such other relief as may be equitable.

M. W. BENJAMIN,
R. G. DAVIES, *Solicitors.*

Good for costs.
M. W. BENJAMIN.

Filed and writ issued May 23, 1884.

RALPH L. GOODRICH,
By W. P. FEILD, *D. C.*

15 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 14th day of April, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On June 28, 1884:

Come the defendants, by Geo. G. Latta, Esq., their solicitor, and file herein their demurrer to the bill; which demurrer is as follows:

16 United States Circuit Court for the Eastern District of Arkansas.

WILLIAM H. GAINES and WIFE, Plaintiffs,
vs.
J. L. B. CAVER and GEORGE G. LATTA, Defendants.

Comes the defendants and demurs to the complaint filed herein, and for grounds of demurrer states—

That the court has no jurisdiction of the subject of the action.

That the complaint does not state facts sufficient to constitute a cause of action against the defendants or either of them, and that there is no equity in the bill.

Wherefore the defendants pray for judgment and for other relief.

GEORGE G. LATTA,
Att'y for Def'ts.

Filed June 28, 1884.

RALPH L. GOODRICH, *Clerk.*

17 And on August 7, 1884, as follows:

Come the defendants, by Geo. G. Latta, Esq., their solicitor, and by leave of the court file herein their answer; which answer is in the words and figures following, to wit:

18 United States Circuit Court, Eastern District of Arkansas.

WILLIAM H. GAINES & MARIA GAINES, His Wife,
vs.
J. L. B. CAVER and GEO. G. LATTA.
Answer.

Comes J. L. B. Caver and George G. Latta, the defendants herein, and for answer to the complaint in this action state that the allegations of the complaint, wherein is stated that Ludovicus Belding entered the southwest quarter of section 33, township 2 south, range 19 west, in pursuance of the instructions of the Secretary of the Interior and in accordance with the pre-emption laws of the United States, and that plaintiffs, William H. Gaines and Maria Gaines, Albert Belding, Henry Belding, and George Belding, under the supervision and control of Wm. H. Gaines, brought suit in the Hot Springs circuit court against —— —— and secured judgment
19 for the possession of said land, and that plaintiff- held peaceable possession of said property, and that plaintiffs built houses on said property and continued in the ownership of the same, are all untrue and not as stated by the plaintiffs.

They deny that J. L. B. Caver conveyed his right to lot No. 8, block 130, by relinquishment m-rely, and that defendant Caver sold and conveyed to George G. Latta subject to the lease of Gaines and the promises therein contained; that they deny all of the allegations of said complaint in referring to the lease as alleged to be executed by William H. Gaines and J. L. B. Caver.

The defendant George G. Latta denies that at the time of acquir-

ing possession of said tract he knew of the lease or anything therein contained.

The defendants deny that they derived their right of pos-
20 session of said property from the said William H. Gaines or Maria Gaines.

The defendants deny that said commissioners misconstrued the law applicable to the state of facts and awarded the right to purchase said lot wrongfully, and that the award thereof to said defendant was wrong and in violation of the law and antagonistic to the evidence introduced in support of defendants' claim to said lot.

The defendants further say that if J. L. B. Caver ever leased from the plaintiffs William H. Gaines any land, it was vacant and wholly unimproved at the time, and the instrument called a lease was an unlawful contract; that if said plaintiffs did make to said J. L. B. Caver a lease for the tract of land now embraced in lot numbered 8, in block No. 130, it was made on the — day of ——, —, for
21 the term of one year from the — day of ——, 187–, at an annual rental of —, in quarterly payments of — each, on the ——, and that said lease was to be renewed from year to year, at the election of said Caver, until the title to said quarter section should be settled, on the same terms and conditions, and that it was stipulated thereby that the lessee should have the right to remove within thirty days from the expiration of the term all buildings and improvements which *they* should erect or build on the land, and that said lessee should not sublet or assign without the written consent of said plaintiffs.

That said defendant, George G. Latta, never leased said tract of land or any part of it from any one.

22 That George G. Latta acquired the possession of and the right to said lot from W. A. Moore, who purchased from J. L. B. Caver, without knowledge of his tenure of title; that the said J. L. B. Caver erected on said lot a frame building that was afterwards destroyed by fire, and that after said fire another building was erected on said lot, which is now upon said premises.

The defendant George G. Latta states that while he was in nowise a party to said lease and had no knowledge of it, yet he believes there was a lease executed by the said J. L. B. Caver, but said lease was to cease and determine after the decision of the court should decide the title to the Hot Springs reservation, which decision of the Supreme Court of the United States was rendered on the 24th day of April, 1876, whereby said quarter section was decided to be the property of the United States and not the property of the said
23 William H. and Maria Gaines; that when said decision was rendered the plaintiff never demanded of any one rent for said tract of land after said 24th April, 1876, and no rent was paid after said date; that said plaintiff in person and by his authorized agents stated to defendant Caver that if defendants would pay up rents to said date as aforesaid, which rents were then in arrears, that plaintiff William H. Gaines would have no further claim upon them; that *plaintiff*, in June, 1876, when the receiver of the Hot Springs reservation appointed on behalf of the United States by the

Court of Claims took charge of the Hot Springs reservation, the said plaintiff William H. Gaines gave said receiver a list containing the names of those who were formerly his tenants and who had paid him rent, and requested him to take possession of the land
24 so occupied by said tenants, and particularly the tract of land leased to said defendant, J. L. B. Caver; that said plaintiff, William H. Gaines, made no effort to carry out his obligations to the defendant Caver or to keep his covenant contained in the said lease, that defendant should have the right to remove his improvement, as provided by said lease; that the plaintiff, on the contrary, urged said receiver to take charge of said improvements and urged all of his tenants to lease the tract of land held by each of said tenants from said receiver, and to relieve plaintiff from all liability by reason of their eviction and the breach of the said stipulations of the said lease, assuring them that if they would do so he would assist them to acquire the title from the United States in their own right; that they unwillingly agreed to this after repeated declarations and assurances on the part of plaintiff, and rented the house and land, at a
25 greatly advanced rent, from said receiver, on the first of June, A. D. 1876; that the defendant was deprived of his right as against plaintiffs to remove the improvements from said land, they being ascertained by said decision to be the property of the United States; that said plaintiff wholly failed and refused to perform such stipulations as to protect defendant in said right of removal as aforesaid; that, as against plaintiffs, defendants had the right to remove said improvements, their term being in full force as to them; that if said improvements had been removed and the plaintiff had filed a claim before said commissioners for said lot it would have been destitute of any foundation whatever. The defendants further say that after said award to said defendant, J. L. B. Caver, the
26 plaintiffs openly declared that they would never make any claim to said lot or any other claim antagonistic to any award made by said Hot Springs commissioners, but would abide and acquiesce*nce* in them and remain satisfied and content with what said commissioners had awarded to them, and that when an effort was making to procure legislation by Congress authorizing a revision by this court or the Land Department of the decisions of said commissioners, which occurred in the latter part of the year 1879 and in the early part of the year 1880, they vigorously opposed the same and insisted, in public meetings held in said quarter section, that said decisions were right and ought never to be disturbed, and that it would be ruinous to disturb them if it could be done; and they also told persons applying to them in reference to property at Hot
27 Springs that the titles to said property were finally settled, and that they would nevor sue for or claim any part of said quarter section which had been awarded to others, whereby their views and intentions, as expressed, became generally known to the occupants and residents of said reservation and to these defendants in particular; that plaintiffs never complained of said award nor put anything upon the record or elsewhere to indicate that they had any claim or right to or against said lot, but acquiesced in the same

until the 23rd of May, 1884, when they instituted this suit against the defendants. Defendants state that a period of more than seven years has elapsed between the commencement of this suit and the first day of June, 1876, the date this defendant attorned to the United States, and by the statutes of Arkansas this suit is barred, and defendants — the statute of limitation; and that from the first day of June, 1876, to the 23rd of May, 1884, the date of the institution
28 of this suit, the defendants have not recognized plaintiff as their landlord, and during all this time defendants have had and hold possession of said lot adversely, notoriously, and openly as against plaintiffs and all persons, and no action was commenced against them by plaintiffs; that on the first of March, 1881, some time after said commissioners had awarded said tract of land to the said Caver, one W. A. Moore and the defendants George G. Latta bought said lot from defendant Caver at the price of —, and said purchase was made without any knowledge whatever of any claim in plaintiffs or of the alleged lease or its terms; they had never seen or heard of the contest before said commissioners or of the evidence taken in said claims, and that it was not accessible to them; that, believing that there was nothing, either in law or in equity, against it, they purchased said lot from said Caver and paid for it;
29 that no rent has ever been demanded by plaintiff of these defendants for said lot; that they obtained from said Caver a deed for said lot, a copy of which is annexed to this answer and made a part thereof, and marked "Exhibit X;" that Albert B. Gaines afterwards, on the — day of ——, 18—, purchased the undivided one-half interest of W. A. Moore in said tract of land. The defendants further say that they owe plaintiffs no rent whatever; that the defendants Latta and M. L. Pohamius, who is the transferee of A. B. Gaines, own the improvements on the said lot, of the value of $1,500.00, which were built and made thereon when it belonged to the United States and were built by the said J. L. B. Caver, and they ask that they be required to pay no rent, but if it be held, and after a full hearing herein, that plaintiffs are entitled to
30 said lot, that plaintiffs be required to pay for improvements, and that the same, due or ascertained, be decreed a lien on said lot and enforced as such; and defendants, while answering herein, in nowise withdraw their demurrer filed herein, but insist that the grounds alleged in said demurrer are good, and that said demurrer should be sustained.

Wherefore they pray that the complaint may be dismissed, and that they may have proper decrees rendered herein, and that costs may be awarded them, and for all other general and special relief to which they are entitled they will ever ask and pray.

GEORGE G. LATTA,
Att'y for Def'ts.

Filed Aug. 7, 1884.

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

31 EXHIBIT "X" TO ANSWER. 640.

This deed, made and entered into on this first day of March, A. D. 1881, by and between Jacob L. B. Caver, party of the first part, and Walter A. Moore and George G. Latta, parties of the second part, witnesseth:

That the party of the first part, for and in consideration of the sum of one thousand dollars to him in hand paid by the parties of the second part, has sold and by these presents does grant, bargain and sell, convey and quitclaim, unto the said parties of the second part, their heirs and assigns forever, together with all appurtenances thereunto belonging, the tract or parcel of land, lying, being, and situated in the county of Garland and State of Arkansas, to wit:

Lot number eight (8), in block one hundred and thirty (130), in the city of Hot Springs, and upon the original Hot Springs
32 reservation of Arkansas, as numbered, mapped, platted, and surveyed by the late Hot Springs Commission:

To have and to hold the same unto the said parties of the second part, their heirs and assigns forever; and the said party of the first part, for himself and his heirs, hereby covenants and agrees to and with the parties of the second part, their heirs and assigns, that he will defend them in the peaceable possession of said premises against any and all persons whomsoever claiming or to claim the same by, through, or under him.

In witness whereof the party of the first part has hereunto set his hand and seal on this first day of March, A. D. 1881.

JACOB L. B. CAVER. [SEAL.]

Witness:

——— ———.

STATE OF ARKANSAS, } ss:
County of Garland, }

On the first day of March, A. D. 1881, before me, the un-
33 dersigned, J. H. Law, clerk circuit court in and for said county and State, personally came Jacob L. B. Caver, who is well known to me to be the same person whose name appears as grantor in and to the foregoing deed, and stated and acknowledged that he had executed the same for the uses, purposes, and considerations therein set forth and mentioned.

In testimony whereof I have hereunto set my hand and official seal this first day of March, A. D. 1881.

J. H. LAW,
Clerk Circuit Court of Garland County.

STATE OF ARKANSAS, } ss:
Garland County, }

I, J. H. Law, clerk of the circuit court and *ex officio* recorder within and for the county of Garland and State aforesaid, do hereby certify that the annexed and foregoing instrument of writing
34 was filed for record in my office on the fifth day of March, 1881, at 11½ o'clock a. m., and the same is now duly recorded — Book *Book* F, page 565.

In testimony whereof I have hereunto set my hand and affixed the seal of my office this the fifth day of March, 1881.

J. H. LAW,
Clerk and ex Officio Recorder.

[Endorsed:] No. 640. William H. Gaines *et al.* — J. L. B. Caver. Exhibit "X" to answer.

35 The following exhibit appears:

No. of entry.	Date of entry.	Name of purchaser.	No. of lot.	No. of block.	Am't rec'd in U. S. currency.	Am't rec'd, cond. bnty. cert'f.	Date patent delivered.
1	April 15, 1880	William W. Joyce	19	68	300 00		
12¼	Aug. 2, 1880	Michael W. Toole and Martha Toole	19	77		110 00	April 1, 1881.
212	April 7, 1881	Maria E. Payne	2	129		220 00	
214	" 11, "	John H. Scroggins & Jas. W. Fannin	8	78		180 00	
349	Aug. 18, "	Susan E. Clyde & Dan'l P. Ingram	15	68	152 00		Sept. 24, 1884.
379	Sept. 3, "	John & Alfred Wakelin	1	77			Aug. 24, 1882.
353	Aug. 23, "	Morris Muscowitz	8	77	136 00		Aug. 3, 1882.
405	Sept. 12, "	Jacob L. B. Caver	8	130	256 00		May —, 1882.
439	" 16, "	Henry A. Booth	10	77	158 00		Aug. 1, 1882.
289	July 13, "	Jonathan Brantley	20	68		144 00	Aug. 1, 1882.
468	Sept. 21, "	Perry Huff	16	68	160 00		Aug. 16, 1883.
291	July 13, "	George W. Barnes	14	77		120 00	Aug. 1, 1882.
546	Oct. 3, "	Mary J. C. Lewis	9	77	132 00		Nov. 13, 1882.
561	" 5, "	Joseph W. Kimbell	9	130	220 00		Sept. 16, 1882.
549	" 4, "	Annie Bartels and Maggie Bartels	17	68	80 00		Dec. 13, 1882.
622	" 8, "	Margaret E. Dill	15	77	96 00		June 15, 1883.

U. S. LAND OFFICE,
LITTLE ROCK, ARK., *April 13th*, 1886.

I, Robert V. Yeakle, register of the United States land office at Little Rock, Arkansas, hereby certify that the above and foregoing described lots and blocks, lying and being in the Hot Springs reservation, Arkansas, appear from the records of this office to have been disposed of by the United States to the respective persons named above under the award of the Hot Spring Commission, together with the dates of delivery by this office of the patents for such purchases in all cases where the records show such patents to have been delivered; and I further certify that I find no record of the issuance nor delivery of nor the patents among the archives of this office for the lots named above which are not marked delivered.

In testimony whereof I have hereunto set my hand this 13th day of April, A. D. 1886.

ROBERT V. YEAKLE, *Register*.

37 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 27th day of October, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On December 4, 1884:

Come the defendants, by Geo. G. Latta, Esq., their solicitor, and, on motion of said solicitor, leave is given them for fifteen days to file answer to amended bill herein.

On January 5, 1885, as follows:

Come the complainants, by M. W. Benjamin and R. G. Davies, Esqrs., their solicitors, and file herein their replication to defendant's answer; which replication is as follows:

38 United States Circuit Court, Eastern District of Arkansas, October Term, 1884.

WILLIAM H. GAINES & WIFE }
vs.
JOHN B. CAVER *et al.* }

The said plaintiffs say their bill is true, and the defendants' answer, as set forth, is not true; and this they are ready to prove.

M. W. BENJAMIN,
R. G. DAVIES, *Solicitors.*

Filed Jan. 5, 1885.

RALPH L. GOODRICH, *Clerk.*

39 UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 12 day of April, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On April 20, 1886:

Come the complainants, by Benjamin and Davies, their solicitors, and come the defendants, by Geo. G. Latta, their solicitor, and this cause is submitted to the court upon the pleadings and evidence, and, by agreement of parties, it is order-d that the complainants have 15 days and the defendants 30 days thereafter in which to file abstracts, and thereafter the complainants to have 10 days and the defendants 10 days thereafter in which to file briefs, and that 5 days thereafter be given for reply. It is further ordered that each party serve upon the opposing party copies of abstracts and briefs.

40 UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 24 day of October, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On November 8, 1887:

WILLIAM H. GAINES and MARIA GAINES, His Wife,
v.
J. L. B. CAVER and GEO. G. LATTA.

Now, on this day, this cause coming on to be heard upon the complaint of the plaintiffs, the answer of defendant George G. Latta, and the replication to said answer and the evidence, and the court having heard the argument of counsel and being now sufficiently advised in the matter as to what decree to render herein, the court finds that the board of commissioners mentioned in said complaint,
41 by error and mistake of law, awarded the right to purchase lot eight, in block one hundred and thirty, of the Hot Springs reservation, in the city of Hot Springs, Garland county, Arkansas, to J. L. B. Caver, and issued to him, the said Caver, a certificate of award, and that in accordance with said erroneous ruling a patent has been issued improperly to said Caver for said lot, and that George G. Latta purchased an undivided half interest of said Caver in said lot before said award was made and while the same

was pending before said commission, and the court is of the opinion that Geo. G. Latta holds said undivided half interest in said lot and patent for the sole use of said William H. Gaines and Maria Gaines. It is therefore considered, ordered, and decreed that all right, title, interest, and estate of Geo. G. Latta in and to said lot be, and the same is hereby, divested out of said defendant and vested in plaintiffs and their heirs and assigns forever, and defend-
42 ant prays an appeal, which is by the court granted.

And it is further ordered that this case be referred to N. W. Cox, Esq., special master of this court, who is directed to ascertain and report to this court at its next term—

1st. The value of the rent of said lot since the said award of said commission.

2d. The taxes paid since said award.

3d. The value of the improvements made upon said lot before and since the award, and report thereon separately.

And said master may examine witnesses touching said matters, and shall reduce the same to writing and report their testimony so taken to the court; and it is further ordered the plaintiffs do have and recover all the costs of suit herein and have execution therefor; and it is further ordered that all questions of law touching the several matters herein referred to the master be, and the same
43 are, reserved until the coming in of his report, and the case is reserved for further directions; and the court finds from the evidence adduced that the undivided half of the lot in controversy is at this date of the value of six thousand dollars; and upon motion of complainants' solicitors it is ordered that this cause be dismissed as to J. L. B. Caver.

And on March 10, 1888, as follows:

Comes N. W. Cox, master herein, and files his report; which report is in the words and figures following, to wit:

44 In the U. S. Circuit Court for the Eastern District of Arkansas.

WILLIAM H. GAINES & WIFE, Pl'ff-,
vs.
J. L. B. CAVER and GEORGE G. LATTA, Def'ts.

To the hon. U. S. circuit court for the eastern district of Arkansas:

In compliance with the decree of this honorable court, made herein November 8th, 1887, I have enquired into the matters therein directed and the result is herewith reported. The parties did not present testimony in accordance with the present reading of the decree; but, in accordance with the rulings of this honorable court made at its last term in similar cases, the testimony taken in such investigation is hereto attached and made a part of this report.

I find from the testimony that the width of said lot 8, block 130, is 32 feet.

That the rent on said lot, in accordance with the lease herein, from date of award, from Dec. 9,
45 1879, to filing of the complaint herein, May 23, 1884, at $10 per front foot per annum—4 yrs. 5 mo. 14 days $1,425 33
Interest on same, 6 yr-. 17 d., @ 6%, to date 517 30
Rent from May 23, '84, to Nov. 8, '87, 3 yrs. 5 mo. 15 d., @ $10 per front foot per annum 1,106 67
Interest on same, 2 yr-. 23 d. 137 05
Rent of lot & improvements from Mar. 8, '87, to Mar. 8, '88, $50 per mo.—4 mo. 200 00

$3,386 35

Over $3,386 35

The defendant is entitled to the following credits:

Taxes, '82, '3, '4, '5, '6, less discount of 15% on account of scrips	$302 38	
Interest on same, av. 3 yrs.	54 42	
Improvement tax, '85, '6, '7, @ $34.00	102 00	
Interest, 2 yrs.	12 24	
Water connections (no date)	78 00	
Grading tax, "	40 00	
Am't paid the U. S. Gov't Jan. 1, '82	256 00	
Int. on same	95 04	
Am't for improvements	1,800 00	
	$2,740 08	$3,386 35
One-half of these am'ts would be ----	$1,370 04	$1,693 17

The difference due pl'f on ½ of this lot $323 13

46 Respectfully submitted,

N. W. COX,
Special Master.

In the Circuit Court for Eastern District of Arkansas.

WM. H. GAINES & WIFE, Pl'f-,
vs.
J. L. B. CEEVER and GEO. G. LATTA, Def'ts.

The deposition of witnesses taken in the above-entitled cause by N. W. Cox, special master, at the office of R. G. Davies, Esq., in the city of Hot Springs, on the 13th day of February, 1888—present, the said plaintiffs by R. G. Davies, Esq., their attorney, and the said defendants by George G. Latta, Esq., their attorney—said depositions taken under notice to the defendants by the special master of the time and place.

WILLIAM H. GAINES, being introduced upon the part of the plaintiffs and duly sworn, says to—

Ques. 1. State your name and residence and age; and are you one of the plaintiffs in this case?

47 Ans. My name is William H. Gaines; of lawful age; residence, Hot Springs, and am one of the plaintiffs in this cause.

Ques. 2. What did you lease the lot in controversy at per front foot?

Ans. Ten dollars per foot.

Ques. 3. Has the property increased or decreased in value since that time?

Ans. Increased.

WILLIAM H. GAINES.

A. B. GAINES, being introduced upon the part of the plaintiffs and duly sworn, says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is A. B. Gaines; age, 30 years; residence, Hot Springs; occupation, real-estate agent, &c.

Ques. 2. State if you are familiar with the rental value of ground in Hot Springs since the bringing of the suit, May 23rd, 1884.

Ans. I am.

48 Ques. 3. What is it per front foot upon lot 8, block 130—the lot in controversy in this cause—from that date to the date of the decree in this cause, November 8, 1887?

Ans. About twelve & $\frac{50}{100}$ dollars per front foot.

Ques. 4. What is the rental value of the ground, with the improvements, now and since that time?

Ans. From sixty to seventy-five dollars per month.

Cross-examination by G. G. LATTA, Esq.:

Ques. 5. You state that property will rent for "from sixty to seventy-five dollars per month." In making this statement what sized house are you testifying to, and of what does it consist?

Ans. It is a two-story house, and I should say covered the greater portion of the ground.

Ques. 6. Are you serious when you say that that property is
49 worth from sixty to seventy-five dollars per month? Have you examined this property and the extent of the improvement thereon, and is your statement made upon your own personal knowledge of the same or merely from seeing the property from its front?

Ans. I pass by the front of the property daily, but have not been in and actually examined the property for some time, but, as I have stated heretofore, in my judgment the property should bring a rental of sixty dollars or more.

Let the cross-examination in the case of Kimball & Latta be the cross-examination in this; which is done by consent of parties.

A. B. GAINES.

C. N. RIX, being introduced upon the part of the plaintiffs and duly sworn, says:

50 Ques. 1. State your name, age, residence, and occupation.

Ans. My name is C. N. Rix; age, 45 years; residence, Hot Springs; occupation, banker.

Ques. 2. State if you are familiar with the rental value of ground in Hot Springs since the date of bringing this suit, May 23rd, 1884.

Ans. Somewhat so.

Ques. 3. What is it per front foot upon lot 8, block 130, the lot in controversy in this cause, from that date to the date of the decree in this cause, November 8th, 1887?

Ans. Eighteen to twenty dollars per month.

Ques. 4. What is the rental value of the ground with the improvements now and since that time?

Ans. From thirty to thirty-five dollars per month.

32 ft.

CHAS. N. RIX.

J. P. MELLARD, being introduced upon the part of the defendants and being duly sworn, says:

Ques. 1. State your name, age, residence, and occupation.

51 Ans. My name is J. P. Mellard; age, 51 years; residence, Hot Springs, Arkansas; occupation, real-estate agent.

Ques. 2. Are you familiar with the buildings on lot 8, block 130, and what are their rental value since November, 1887?

Ans. I am. The whole buildings are worth fifty dollars per month; that would be about an average; sometimes more and sometimes less. When all occupied—that is, when *when* it was at its best—it rented for sixty dollars per month, and it has run down and rented as low as forty dollars per month.

Ques. 3. Is this the net or gross receipts?

Ans. The gross receipts.

Ques. 4. Now, what would be a rental value of the net proceeds of that building, from your knowledge, to the owners?

Ans. We have been making repairs there, more or less, every month, and these repairs are made by the owners and not by

52 the tenants, and the net rental value would be, in my opinion, from forty to forty-five dollars per month.

Ques. 5. What would be a fair rental value of that ground per front foot, considering the width and depth of lot?

Ans. I do not know.

Ques. 6. Do you know the lot in the Hale block, as rented by ground lease to Ed. Hogaboom by order of Garland probate court, and which is the more valuable lot and worth the most ground rent, that or the lot about which you have been testifying?

Ans. The Hale lot.

Ques. 7. How much more?

Ans. A fifth or sixth more.

Ques. 8. Do you know what amount was paid out for plumbing in making connections with the water works?

Ans. About sixty dollars.

Ques. 9. Do you remember the amount that was paid out to Sloan for sidewalk and stone pillars?

53 Ans. I do not remember the amount. I remember that the guttering cost about twenty-four dollars.

Ques. 10. Do you know what the last grading cost?

Ans. About one & $\frac{25}{100}$ dollars per foot, and there were thirty-two feet of it.

J. P. MELLARD.

P. J. LEDWIDGE, being introduced upon the part of the plaintiff and sworn, says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is P. J. Ledwidge; age, 45 years; residence, Hot Springs; occupation, contractor and builder.

Ques. 2. What is the present value of the improvements upon lot 8, block 130, city of Hot Springs?

Ans. Eighteen hundred dollars.

P. J. LEDWIDGE.

—— VAN PATTEN, being introduced upon the part of the plaintiffs and duly sworn, says:

54 Ques. 1. State your name, age, residence, and occupation.

Ans. My name is S. P. Van Patten; age, 33 years; residence, Hot Springs; occupation, architect.

Ques. 2. What is the present value of the improvements upon lot 8, block 130, city of Hot Springs?

Ans. Eighteen hundred dollars.

S. P. VAN PATTEN.

55 UNITED STATES OF AMERICA, *Eastern District of Arkansas.*

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 9th day of April, anno Domini one thousand eight hundred and eighty-eight, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On April 19, 1888:

Comes the defendant Geo. G. Latta and files herein his exceptions to report of master; which exceptions are as follows:

56 In the United States Circuit Court for the Eastern District of Arkansas.

WILLIAM H. GAINES & WIFE, Plaintiffs, *vs.* J. L. B. CAVER and GEORGE G. LATTA, Defendants. } Exceptions to Master's Report.

Comes George G. Latta and excepts to the report of N. W. Cox, as special master, as filed in this cause, — for grounds of exception states:

First. That he excepts to the item of $1,425.33, because the same is excessive and is based upon an instrument that has no validity and is not binding upon the parties to this cause.

Second. That he excepts to the item of $517.30, because if said item were erased, upon which interest is calculated, the calculation of interest as to time is not correct.

Third. That he excepts to the item of $1,106.67, because
57 the same is not borne out by the testimony.

That a preponderance of testimony taken before the master shows that the ground rent was not worth $10.00 per front foot, as this lot in controversy was a lot having only a depth of fifty-five feet.

The testimony in this — is that the property is only worth a ground rental of seven to eight dollars per front foot.

Fourth. He excepts to the item of $137.05, as being interest on the same.

Fifth. That he excepts to the item of $200.00, because the same is not borne out by the testimony before the master. The rent of lot and improvements from November 8th, 1887, is fixed at $50.00 per month. The testimony shows that this property never at any time rented for more than fifty dollars, and then out of that the expenses of keeping up the same and keeping the property in
58 repair had to be borne. The testimony of Mellard and Rix and Latta himself shows that this property has never yielded more than from thirty to forty dollars per month.

The only *witness* that the master is justified in making any such report as $50.00 is that of A. B. Gaines, who is the son of the plaintiffs and interested in having the highest rental value fixed. Mellard's testimony shows that the gross receipts were never more than fifty dollars per month, and out of this the repairs had to be paid for, and none of these repairs appear in the items of credits allowed the defendants.

Sixth. The master has failed to give the credit of twenty-four dollars, as shown by the testimony of Mellard and Latta, — was paid out.

59 Seventh. The testimony of Latta, which was taken in No. 641 and was to be the testimony in this case, shows that seventy-two dollars was paid out and expended on lot number eight, in block 130, for sidewalks and rock foundations for the same. This item of credit the master has overlooked and failed to place to the credit of defendant.

Eighth. The master finds the total amount of debits and credits as follows $2,740 08 $3,386 35

One-half of these amounts would be $1,370 04 $1,693 17

And he then states the difference due plaintiff on one-half of this lot would be $323.13; and this is error, as there is only one-half of this lot in controversy, and this amount should be divided; and the proper amount, according to his own report, should be $161.56.

And defendant asks that his exceptions be considered, and that

the master's report be corrected in the several items and particulars as above set forth.

GEO. G. LATTA, *For Self.*

Filed April 19, 1888.

R. L. GOODRICH, *Cl'k.*

60 And on April 21, 1888, as follows:

Come the complainants, by M. W. Benjamin, their solicitors, and come the defendants, by G. G. Latta, their solicitor, and file herein their agreement as to testimony; which agreement is as follows:

61 In the United States Circuit Court, Eastern District of Arkansas.

WILLIAM H. & MARIA GAINES *vs.* L. B. CAVER, GEORGE G. LATTA. } No. 640. Agreement as to Testimony.

It is agreed by and between the plaintiffs and the defendants that the testimony taken in the cases of No. 632, Wm. H. Gaines & Wife *vs.* P. Helfrich; No. 658, Wm. H. Gaines & Wife *vs.* Finnie & Scoggins; No. 633, Wm. H. Gaines & Wife *vs.* B. Schicker; No. 639, Wm. H. Gaines & Wife *vs.* Charlotte Cohn; No. 651, Wm. H. Gaines & Wife *vs.* Morris Moscowitz, James A. Smith, & Jennie Smith, all of said cases being in this court, shall be taken and considered as the testimony in this case, and this agreement is made for the purpose — allowing and securing to plaintiffs and defendants the benefit of said testimony in this court and an appeal to the Supreme — of the United States.

M. W. BENJAMIN,
Of Counsel for Pl'fs.
GEORGE G. LATTA,
Att'y for Def't.

Filed April, 1885.

RALPH L. GOODRICH, *Clerk.*

62 On April 21, 1888, as follows:

Now, on this day, comes the said plaintiffs, by their solicitors, M. W. Benjamin, R. G. Davies, and U. M. & G. B. Rose; and also comes the said defendant, George G. Latta, by Geo. G. Latta, his solicitor; and the special master having heretofore filed his report herein, and this case now coming on for hearing, and the court having heard the argument of counsel and being now sufficiently advised as to the further decree to render herein, it is ordered, adjudged, and decreed that all the exceptions of the defendant to the master's report be, and the same are, overruled; to which ruling defendant excepts; and thereupon the court finds and states the account between the plaintiffs and defendant as follows:

To amount due plaintiffs for rent, according to the terms of the lease, from the date of award to the date of the filing of the bill in this case and the interest, $1,942.63.

63 To amount due him since said date and until the filing of the master's report, rental value of the property and interest, $1,242.02.

To amount of rent to date of this decree, $2,000.

Amounting in the aggregate, to the sum of $3,386.35.

By amount due the defendant for taxes paid and interest, $637.04.

By amount of purchase-money paid by him to Government for said lot and interest, $351.04.

By present value of the improvements, $1,800.

Which said sum amounts in the aggregate to —.

Which leaves the sum of $275.13, which the court finds to be the balance now due.

It is therefore ordered, adjudged, and decreed that the said plaintiffs are to have and recover from said defendants said amount of $275.13 and all costs of this suit, and that *he* have execution therefor.

64 And it is further ordered and decreed that the said plaintiffs do have and do recover from said defendants the possession of the undivided half of said lot eight (8), in block one hundred and thirty (130), and that a writ of possession issue, and serving a copy of this decree shall be the writ.

It is further ordered that N. W. Cox be allowed the sum of one hundred dollars (100) for his services as special master herein.

And the defendant prays an appeal to the Supreme Court, which is granted; and it is ordered that upon his executing and filing a bond, within the time and conditioned as prescribed by law, in the sum of fifteen hundred dollars (1,500), and a cost bond for two hundred and fifty dollars ($250), with good, approved security, the decree be superseded pending said appeal.

On June 2, 1888, as follows:

65 Comes the defendant, George G. Latta, and files herein his supersedeas and cost bond, which are approved by the court; which bonds are as follows:

66 No. 640.

In the United States Circuit Court.

WM. H. GAINES & WIFE, Plaintiffs,
vs.
L. B. CAVER *et al.*, Defendants.
} Bond for Appeal.

Know all men by these presents that we, George G. Latta, and S. W. Fordyce, are held and firmly bound unto Wm. H. and Maria Gaines in the sum of $250, to be paid to the said William H. and Maria Gaines, their executors and administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals this 9th day of May, A. D. 1888.

Whereas the above-named Geo. G. Latta has prayed an appeal to the Supreme Court of the United States from a decree ren-

67 dered in the above-entitled action by the circuit court of the United States against them in favor of William H. and Maria Gaines:

Now, therefore, the condition of this obligation is such that if the above-named George G. Latta shall prosecute his appeal to effect and answer if he shall fail to make his appeal good, then this obligation shall be void; otherwise to remain in full force and effect.

GEORGE G. LATTA.
S. W. FORDYCE.

—— ——, being duly sworn, deposes and says he is worth the sum of $— over and above all his just debts, liabilities, and legal exemptions.

—— ——.

Filed June 2nd, 1888. RALPH L. GOODRICH, *Clerk.*

68 No. 640.

In the United States Circuit Court.

WILLIAM H. GAINES & WIFE, Plaintiffs,
vs.
L. B. CAVER *et al.*, Defendants. } Bond for Costs.

Know all men by these presents that we, George G. Latta and S. W. Fordyce, are held and firmly bound unto William H. and Maria Gaines in the sum of $1,500, to be paid to the said William H. and Maria Gaines, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 9th day of May, A. D. 1888.

Whereas the above-named George G. Latta has prayed an appeal to the Supreme Court of the United States from a decree ren-
69 dered in the above-entitled action by the circuit court of the United States for the eastern district of Arkansas, divesting him of the title to the lot 8, block one hundred and thirty (130), in the Hot Springs reservation, in Arkansas, and vesting it in William H. and Maria Gaines, and adjudging and decreeing him to pay them the sum of $775.13 and costs of this suit, but permitting them to supersede the judgment for said sum of money upon giving bond in the sum of $1,500, together with a cost bond, which cost bond has been given and will be filed at the same time with this:

Now, therefore, the condition of this obligation is such that if the above-named George G. Latta shall prosecute his said appeal to effect and answer all damages which may arise from the
70 superseding of said judgment for said sum of money and all costs if he shall fail to make his appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

GEORGE G. LATTA.
S. W. FORDYCE.

—— ——, being duly sworn, deposes and says he is worth the sum of $— over and above all his just debts, liabilities, and legal exemptions.

—— ——.

Filed June 2, 1888. RALPH L. GOODRICH, *Clerk.*

* * * * * * *

303 UNITED STATES OF AMERICA,
Eastern District of Arkansas.

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A.

In witness whereof I have hereunto set my hand and the seal of said court this 5th day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and thirteenth.

Attest:

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

304 In the Supreme Court of the United States.

GEO. G. LATTA *et al.*
vs.
WM. H. GAINES *et al.* } # 314.

Whereas there is pending in the Supreme Court of the United States the cases of Sumpter *et al. vs.* Gaines *et al.*, # 313, and the two cases of Geo. G. Latta *vs.* Gaines *et al*, # 314 and # 315; and

Whereas by an agreement made with Mr. Benjamin, attorney for W. H. Gaines *et al.* in the trial of the causes in the United States — court for the eastern district of Arkansas, by which the testimony in certain other causes pending in said court was to be used and taken as testimony in the three above-mentioned cases; and

Whereas, when said cause was decided in the United States — court for the eastern district of Arkansas as aforesaid, said testimony, in accordance with said agreement as aforesaid, was copied and a transcript made of the same and said transcripts of said cases were filed in the Supreme Court of the United States; and

Whereas the testimony in cases # 313, # 314, and # 315 is identical and the same testimony; and

Whereas this testimony was taken from the testimony in the other cases in said court, in which were involved similar issues; and

Whereas said testimony has been printed in the other
305 causes pending in the Supreme Court of the United States; and

Whereas it would be an expenditure without any benefit to either party herein to cause said testimony to be reprinted, and the same having already been printed:

Now, this agreement, made and entered into between Jno. J.

Sumpter — Geo. G. Latta, by Jno. McClure and U. M. & G. B. Rose, attorneys for all the parties herein, witnesseth:

That the said parties agree that the printed testimony in the cases now pending in the Supreme Court, which were appealed from the circuit court of the United States for the eastern district of Arkansas, and in which case- the said Wm. H. Gaines *et al.* are appellees, shall be taken as the testimony in this case, and the same shall be used as the testimony in the three above-mentioned cases, and that the record of those cases shall be a record in these cases, "excepting the complaint, answer, and other pleadings filed in said causes and the testimony taken before the Hot Springs commissioners and the records of the United States circuit court in these cases, together with the report of the special master and the decree thereon."

And it is agreed that the testimony in #313, #314, and #315 shall not be printed, except as above agreed.

This agreement is made without an opportunity to examine the transcripts in this case, and it is agreed that if, after the transcript is printed in accordance with this agreement, it shall be required by the appellees that any additional matter in the transcript on file shall be printed, then said appellants shall cause it to be printed accordingly.

306 Given under our hand- this 4th day of February, 1892.

JOHN McCLURE,
For Appellant.
U. M. ROSE,
For Appellees.

307 [Endorsed:] 13467. Supreme Court of the U. S. October term, 1891. Term No., 314. George G. Latta, app't, *vs.* Wm. H. Gaines *et al.* Stipulation as to record and to omit parts of same in printing.

[Stamped:] Office Supreme Court U. S. Filed Feb. 15, 1892. James H. McKenney, clerk.

Endorsed on cover: Case No. 13,467. E. Arkansas C. C. U. S. No. 314. George G. Latta, appellant, *vs.* William H. Gaines and Maria Gaines. Filed January 2, 1889.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

GEORGE G. LATTA, Appellant,
v.
WILLIAM H. GAINES & MARIA GAINES, Appellees. } No. 314.

It is agreed of counsel in this case, in order to lessen the printed record and to shorten the case made, that plaintiff read in evidence in the court below the transcript of the proceedings before the Hot Springs Commission showing his petition, his entry of the lands, and his improvements on the same, as shown in the case of George H. Smith, appellant, *v.* Wm. H. and Maria Gaines, now on docket in this court and numbered 302; that said Gaines and wife filed their said petition before said commissioners within the time required by law asking to be allowed to purchase the lot named in their bill herein; that J. L. B. Caver also filed his petition before said commissioners within the time required by law asking that he be allowed to purchase said lots, and that said petitions were consolidated and heard by said Commissioners as one case.

That said Gaines, as appears by said transcript, read in evidence before said commissioners a written lease of said lot, which is as follows:

This indenture, made this 12th day of January, 1874, between William H. Gaines, of Garland county, Arkansas, party of the first part, and J. L. B. Caver, of said county, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the covenants hereinafter agreed to be performed by the said party of the second part, has leased and let and does by these presents lease and let unto the said party of the second part a certain lot or parcel of land situate in the village of Hot Springs, in the county of Garland, in the State of Arkansas, and described as follows: Beginning twelve feet north of the northwest corner of the boarding-house known as the South Carolina house, on the east side of the principal street of said town of Hot Springs, runs thence north twenty feet, thence east eighty feet, thence south twenty feet, thence west eighty feet to the place of beginning; to have and to hold the same unto the said Caver from the first day of January, 1874, until the title to the Hot Springs quarter section is settled: provided that the said Caver may surrender the above-described premises and determine this lease at his own election if he shall have complied with all and singular the covenants hereinafter contained.

The said Caver, party of the second part, covenants and agrees to pay unto the said party of the first part, his agent, heirs, or assigns, as a rental on the above premises, the sum of two hundred dollars